## REMARKS/ARGUMENTS

Claims 1-5, 9, 14, 15, 17 and 18 remain in the application, all of which stand rejected. Claims 6-8, 10-13, 16, 19 and 20 have been cancelled.

Claim 1 has been amended to incorporate the limitations of cancelled claim 7. Claim 5 has been amended to place the claim in independent form. Claim 9 has been amended to incorporate the limitations of cancelled claim 10. Claim 14 has been amended to incorporate the limitations of cancelled claim 16. None of these amendments introduce new matter.

### 1. Provisional Double Patenting Rejection of Claims 1-20

Claims 1-20 stand provisionally rejected under the judicially created doctrine of double patenting over claims 1-20 of copending Application No. 09/751,011. Applicants acknowledge the Examiner's "provisional" rejection and, upon the allowance of claims in either case at issue, will file an appropriate Terminal Disclaimer.

Applicants are confused by the Examiner's additional requirement that they cancel conflicting claims from one of the two applications involved in the Examiner's double patenting rejection. In making the double patent rejection, the Examiner asserts that the claims in Applicants' two applications *are not patentably distinct*. However, the Examiner's Note at the end of MPEP 822 (which is the section that addresses when an Examiner may request the cancellation of claims) says, "This paragraph is only appropriate when the conflicting claims *are patentably distinct*" (emphasis added).

Clarification as to what requirement the Examiner is placing on Applicants (i.e., the filing of a Terminal Disclaimer, or the cancellation of claims) would be appreciated. In Applicants' opinion, MPEP 822 seems to be directed to situations where conflicting claims depend from the same disclosure. This is supported by the example given in MPEP 822 (i.e., where an Examiner determines a restriction

requirement was improper and there is still time to merge the claims of a divisional

back into its parent case).

## 2. The Rejection of Claims 1-20 Under 35 USC 102(e)

Claims 1-20 stand rejected under 35 USC 102(e) as being anticipated by
Colby et al. (US Pat. No. 6,449,647; hereinafter "Colby").

Claim 1 has been amended to incorporate the limitation(s) of former claim 7.
With respect to claim 7, the Examiner asserts that Colby's disclosure of a content-
aware flow switch 110 that intercepts content requests from clients (Colby, col. 8,
lines 39-44) is equivalent to Applicants' user interface for selecting a requested level
of service. Applicants disagree. Colby expressly states that operation of the content-
aware flow switch is "transparent" to clients (Colby, col. 2, line 64). Applicants cannot
find any teaching by Colby that the switch prompts a user to "select" a requested
level service. Applicants' claim 1, as amended to incorporate the limitation(s) of claim
7, is therefore believed to be allowable. Applicants' claims 2-4 are believed to be
allowable at least for the reason that they depend from claim 1. Applicants' claim 9 is
believed to be allowable for reasons similar to why claim 1 is believed to be
allowable.

Claim 5 has been amended to place the claim in independent form. With
respect to claim 5, the Examiner asserts that Colby teaches the assignment of a
requested level service based on user identification in col. 3, lines 27-34, wherein
Colby discloses that servers in the same location as a client may be identified.
Applicants disagree. In col. 3, lines 27-34, Colby discusses the identification of
servers that a transaction "might be routed to", based on the proximity of the servers
to a client. "Identifying a group of servers" to which a transaction might be routed,
based on their proximity to a client, is not the same as "assigning a requested level of
service" to a transaction based on the identity of the client. Applicants' claim 5, as
amended to place it in independent form, is therefore believed to be allowable.

Claim 14 has been amended to incorporate the limitation(s) of former claim 16.
With respect to claim 16, the Examiner asserts that claim 16 does not teach any

limitation(s) above and beyond those found in claims 1-14. As a result, the Examiner does not provide any specific basis for rejecting claim 16. Applicants disagree with the Examiner's characterization of former claim 16 (now part of claim 14).

Applicants' amended claim 14 states that program code assigns "parts of said service tag at more than one point on said network". Thus, there is no one entity (e.g., Colby's content-aware flow switch) that determines the nature of the service tag and, instead, the technology for assigning the service tag is distributed between various points on a network. See, for example, Applicants' disclosure at page 17, lines 10-29, wherein Applicants provide various examples of the "points" where a service tag may be assigned or appended to. Applicants cannot find any teaching of such distributed service tag assignment by Colby. Applicants claim 14, as amended to incorporate the limitation(s) of claim 16, is therefore believed to be allowable. Applicants' claims 15 and 17-18 are believed to be allowable at least for the reason that they depend from claim 14.

### 3. Conclusion

Given the above Amendments and Remarks, Applicants respectfully request the issuance of a Notice of Allowance.

Respectfully submitted,
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